

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ORLANDO WASHINGTON,)	
)	
Petitioner)	
)	
vs.)	CAUSE NO. 3:16-CV-391 RLM
)	(Arising out of 3:07-CR-132 RLM)
UNITED STATES OF AMERICA,)	
)	
Respondent)	

OPINION and ORDER

Defendant, Orlando Washington, filed a petition under 28 U.S.C. § 2255, seeking to have his sentence vacated based on his claim that the holding in Johnson v. United States, 135 S.Ct. 2551 (2015) established that he was improperly designated as a career offender. The court held that Mr. Washington’s prior convictions didn’t fall with the residual clause of the Armed Career Criminal Act, so Johnson didn’t affect his status as a career offender. [Doc. No. 45]. Mr. Washington has filed an appeal of that order and is before the court asking that a certificate of appealability be issued and that he be granted leave to proceed *in forma pauperis* on appeal.

Issuance of a certificate of appealability requires the court to find that Mr. Washington has made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). He hasn’t done so. Mr. Washington’s conclusory assertion that his prior conviction for aggravated battery is no longer a crime of violence in light of Johnson is factually and legally unsupported. His request to

stay the court's ruling on his motion for a certificate of appealability pending a decision by the Supreme Court in Beckles v. United States, 616 Fed. Appx. 415 (11th Cir. 2015), *cert. granted*, __ S.Ct. __, 2016 WL 1029080 (June 27, 2016) would unduly delay proceedings in this case.

A financially indigent person can be permitted to proceed on appeal *in forma pauperis* unless the court "certifies that the appeal is not taken in good faith." Fed. R. App. P. 24(a)(3). In other words, the court must determine "that a reasonable person could suppose that the appeal has some merit." Walker v. O'Brien, 216 F.3d 626, 632 (7th Cir. 2000). Because no reasonable person could find that Mr. Washington's appeal has merit, the court concludes that his appeal is not taken in good faith, and his request for pauper status must be denied.

Based on the foregoing, Mr. Washington's motion for a certificate of appealability [Doc. No. 49] and motion for leave to proceed *in forma pauperis* on appeal [Doc. No. 51] are DENIED.

SO ORDERED.

ENTERED: August 9, 2016

 /s/ Robert L. Miller, Jr.
Judge
United States District Court

cc: O. Washington
United States Attorney's Office